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ORIGINAL

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MOYES SELLERS & HENDRICKS
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Phoenix, Arizona 85004
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AZ CORP COMMISSION
DOCKET CONTROL


BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH, CHAIRMAN
BOB STUMP
BOB BURNS
TOM FORESE
DOUG LITTLE

Arizona Corporation Commission
DOCKETED

FEB 02 2015

DOCKETED BY 

**IN THE MATTER OF THE
COMMISSION ON ITS OWN MOTION
INVESTIGATING THE FAILURE OF
TRUXTON CANYON WATER
COMPANY TO COMPLY WITH
COMMISSION RULES AND
REGULATIONS**

Docket No. W-02168A-10-0247

**NOTICE OF COMPLIANCE
REPORT**

Pursuant to Decision No. 74833, Truxton Canyon Water Company, Inc.
("Company") hereby files its report detailing compliance with Decision No. 74833.

Compliance has been established as follows:

1. Bacus Refund. On November 10, 2014, before Decision No. 74833 was issued, the Company established with the Commission that the Bacus refund was paid in full. *See, e.g.,* Exceptions to the Recommended Opinion and Order, Att. 1 (Nov. 10, 2014).

1 To ensure there were no additional issues, the Company filed an affidavit regarding this
2 fact on December 31, 2014. *See* Notice of Compliance at Att. 2.


3
4 2. Water System Transfer. The Claude K. Neal Family Trust transferred the water
5 system to the Company on December 29, 2014 and filed evidence of the transfer on
6 December 31, 2014. *See Id.* at Att. 1.

7
8 3. Neal Loan. On or about December 4, 2014, Rick Neal instructed the Company
9 bookkeeping staff and the accountant to treat the loan from the Neal family to the
10 Company as paid-in capital.

11
12 4. File Extension Agreements. There are no extension agreements to file. Prior to
13 the Decision No. 74833 being issued, the Commission Staff had received both contracts
14 alleged at one time to be extension agreements; namely, the agreement with Bacus and
15 Northern Arizona Consolidated Fire District. *See* Rebuttal Testimony of Rick Neal, p. 5
16 and Attachments 4 & 5 (Jan. 27, 2012). For the Commission's convenience, a copy of
17 the relevant excerpts is attached hereto as Attachment A.
18

19 RESPECTFULLY SUBMITTED this 2nd day of February, 2015.
20

21
22 **MOYES SELLERS & HENDRICKS LTD.**

23
24 
25 Steve Wene

26
27 Original and 13 copies of the foregoing
28 filed on this 2nd day of February, 2015 with:

1 Docket Control
2 Arizona Corporation Commission
3 1200 W. Washington Street
4 Phoenix, Arizona 85007

5 Copy of the foregoing mailed this
6 2nd day of February, 2015 to:

7 Bridget A. Humphrey, Staff Attorney
8 Charles H. Hains, Staff Attorney
9 Legal Division
10 Arizona Corporation Commission
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 Patrick Black
14 Fennemore Craig, P.C.
15 2394 E. Camelback Rd., Suite 600
16 Phoenix, Arizona 85016
17 Attorneys for Intervenor Valle Vista
18 Property Owners Association, Inc.

19 Donnelly Herbert
20
21
22
23
24
25
26
27
28

Attachment A

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**
3
4

5 **COMMISSIONERS**

6 GARY PIERCE, CHAIRMAN

7 PAUL NEWMAN

8 SANDRA D. KENNEDY

9 BOB STUMP

10 BRENDA BURNS

11 **IN THE MATTER OF THE**
12 **COMMISSION ON ITS OWN MOTION**
13 **INVESTIGATING THE FAILURE OF**
14 **TRUXTON CANYON WATER**
15 **COMPANY TO COMPLY WITH**
16 **COMMISSION RULES AND**
17 **REGULATIONS**

Docket No. W-02168A-10-0247

REBUTTAL TESTIMONY OF
RICK NEAL

18 **Q Please state your name and current employment position:**

19 **A My name is Rick Neal. I am currently a managing member of Blackhawk**
20 **Developers.**

21 **Q Describe your educational and professional background:**

22 **A In 1984, I graduated from Northern Arizona University with a major in civil**
23 **engineering. From 1984 to 1989, I worked for McCarthy, a construction firm, in the**
24 **Phoenix area as a project engineer and manager. From 1989 to 1991, I was employed in**
25 **Washington D.C. essentially lobbying on behalf of agricultural interests. In 1991, I**
26 **moved to Las Vegas, Nevada, employed in the building and development industry. In**
27 **2007, became a partner in Blackhawk Developers, which is now managing the Truxton**
28

1 **Q Please comment on the Bacus issue.**

2 **A** The Company agreed to refund Mr. Bacus his line extension deposit. The
3
4 Company has paid Mr. Bacus approximately \$10,750. *See* Attachment 3. However, the
5 Company will likely no longer be able to make repayments to Mr. Bacus due to the lack
6 of revenue caused by the new rates applicable to the golf course.
7

8 **Q Please comment of the ACC inspection that occurred on November 21, 2011.**

9 **A** I attended that inspection. All of the issues raised by Staff were very minor and
10 resolved. In addition, I disagree with Staff's implication that the four leaks from the
11 previous inspection were still leaking. These leaks were previously repaired. It had just
12 rained which is why the dirt around the proximity was wet.
13

14 **Q Please comment on Staff's statement that the Company has not filed any**
15 **main line extension agreements, including the one with the fire district.**

16 **A** That is misleading. The fire district provided Staff the mainline extension
17 agreement on March 8, 2010. *See* Attachment 4. The Company was copied on the email,
18 so it was aware that Staff has the agreement. The ACC also has a copy of the Bacus
19 mainline extension agreement. There are no other agreements. *See* Attachment 5.
20

21 **Q Please comment on the Trust being a public service corporation.**

22 **A** I understand this is a legal issue mostly. But from my perspective, the Trust is not
23 a public service corporation because it does not serve water to the public. The Trust
24 owns wells and the main transmission line. It no longer sells water to VVPOA or any
25 other end water user. It simply delivers water to the water company.
26
27

28 **Q Please comment on the proposed transfer of the Trust wells and pipeline to**
the Company.

ATTACHMENT 4

Steve Wene

From: tamblackhawk@gmail.com on behalf of Tammi Black [tammi@truxtoncanyonwater.com]
Sent: Friday, January 27, 2012 12:31 PM
To: Steve Wene
Subject: Fwd: FW: Hydrant Agreement b/t NACFD and Cerbate and Truxton Canyon Water Companies
Attachments: 03-02-10 HYDRANT AGREEMENT.pdf

Steve,

Here's the e-mail that Mike sent to me this morning. It shows the agreement was sent by the Fire Department to the ACC as well as to Mike and Rick. Hope this clears things up.

Tammi

----- Forwarded message -----

From: Mike Neal <mike@truxtoncanyonwater.com>
Date: Fri, Jan 27, 2012 at 10:34 AM
Subject: Fwd: FW: Hydrant Agreement b/t NACFD and Cerbate and Truxton Canyon Water Companies
To: Tammi Black <tammi@truxtoncanyonwater.com>

----- Forwarded message -----

From: Mike Neal <mike@truxtoncanyonwater.com>
Date: Thu, Dec 1, 2011 at 11:35 AM
Subject: Fwd: FW: Hydrant Agreement b/t NACFD and Cerbate and Truxton Canyon Water Companies
To: Rick Neal <rick@truxtoncanyonwater.com>, Michelle Monzillo <michelle.waterco@gmail.com>

Rick,

Attached is the hydrant agreement between Truxton Canyon Water and NACFD#1. There were no other line extension agreements any time from January 2009 to present.

Thanks,

Mike

----- Forwarded message -----

From: Michael Neal <mikeneal260@msn.com>
Date: Thu, Dec 1, 2011 at 11:28 AM
Subject: FW: Hydrant Agreement b/t NACFD and Cerbate and Truxton Canyon Water Companies
To: mike@truxtoncanyonwater.com

1/27/2012

From: c.wells@northernazfire.com
To: Aamezcua@azcc.gov
CC: p.moore@northernazfire.com; mikeneal260@msn.com; ricknea@gmail.com
Subject: Hydrant Agreement b/t NACFD and Cerbate and Truxton Canyon Water Companies
Date: Mon, 8 Mar 2010 08:47:51 -0700

Mr. Amezcua:

The hydrant installation and maintenance agreement between NACFD and the Neal water companies is attached. I'm assuming that this event concludes the "informal" complaint and mediation process and that, should the water companies fail to deliver, NACFD can proceed to the formal complaint process directly.

Thank you and your colleagues for your very professional and effective assistance. We are also appreciative of Mike and Rick Neal's participation in the mediation and agreement process. We hope that this marks the end of a "rough patch" and the beginning, or continuation, of cooperative relations in the best interests of Fire District taxpayers.

Charlotte Wells

Fire District Attorney

--

Sincerely,

Mike Neal



Mike Neal
7313 E. Concho Dr., Suite B
Kingman, AZ 86401
O (928) 757-2205
F (928) 757-2217
C (928) 716-4788
mike@truxtoncanyonwater.com
<http://www.truxtoncanyonwater.com>

1/27/2012

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Tammi Black
Truxton Canyon Water Company
7313 E. Concho Drive, Suite B
Kingman, AZ 86401
(702)256-4006 Phone
(702) 256-2522 Fax
tammi@truxtoncanyonwater.com

**HYDRANT INSTALLATION AND MAINTENANCE AGREEMENT
BETWEEN NORTHERN ARIZONA CONSOLIDATED FIRE DISTRICT #1
AND CERBAT AND TRUXTON CANYON WATER COMPANIES**

This Agreement by and between Northern Arizona Consolidated Fire District #1 (NACFD), a political subdivision of the State, and Cerbat Water Company (CW) and Truxton Canyon Water Company (TCW), two commonly-owned public utilities licensed by and operating under authority of the Arizona Corporation Commission, is entered into this 2d day of March, 2010, for the purpose of providing for the installation of four (4) new fire hydrants and for the maintenance and testing of all hydrants within the concurrent jurisdiction of the parties.

WHEREAS, Cerbat (CW) and Truxton Canyon (TCW) Water Companies have received payment in the total amount of \$17,420 for the installation of four (4) fire hydrants at locations within NACFD's jurisdiction to be selected by NACFD; and

WHEREAS, it is necessary to provide for the maintenance and testing of the four (4) new hydrants as well as those already in existence.

NOW THEREFORE, for and in consideration of the mutual covenants and promises herein, the parties hereto agree as follows:

THE WATER COMPANIES agree:

- A. To install the four (4) hydrants of equal quality and utility to existing hydrants before midnight May 15 2010, one at each of the following locations:
 1. TCW – at or near California & Painted Rock
 2. TCW – on Mano at Superstition
 3. TCW – near Concho & Rawhide East (40' east of Intersection)
 4. CW – at or near Bank & Calle Blanca (where water line intersect Calle Blanca)
- B. Should CW and/or TCW fail to install said hydrants, or any of them, by said time and date, reimbursement to NACFD shall be due immediately.
- C. To allow NACFD, within the first six months of the agreement, to flow test, without charge, inspect and paint or repaint all hydrants on or within CW and TCW systems within the Fire District. Thereafter NACFD shall be allowed to inspect and paint or repaint each hydrant annually and to flow test, without charge, each and every hydrant once every thirty six (36) months, except where there is damage or where flows are in question in the interim, NACFD may test more frequently.
- D. In the event that service is interrupted or pressure is significantly compromised for any reason or for any period of time, CW and/or TCW shall immediately notify NACFD through dispatch and NACFD's duty officer at (928) 757-5307.

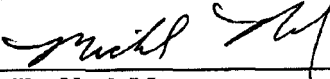
NACFD agrees to:

- A. Promptly inspect and approve installations and/or give reasonable notice of any dissatisfaction with any installation and allow the water companies reasonable time to cure.

- B. Give CW and/or TW twenty-four (24) hour notice before flow testing and otherwise cooperate with the water companies so that flow testing does not unreasonably interfere with the companies' service to their domestic customers.
- C. Provide a copy of this agreement to the Arizona Corporation Commission as evidence of the parties' good faith efforts to resolve the parties' pending disputes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their authorized representatives that day and year first above written.

CERBAT AND TRUXTON CANYON WATER COMPANIES

By 
Mike Neal, Manager

NORTHERN ARIZONA CONSOLIDATED FIRE DISTRICT #1

By  03-04-10
Patrick Moore, Fire Chief

ATTACHMENT 5

A-1

Lot 34

**LINE EXTENSION AGREEMENT
FOR
COMPANY INSTALLED FACILITIES**

BETWEEN

TRUXTON CANYON WATER CO., INC.

AND

JAMES BACUS

APRIL 20, 2007

Lot
34

A-2

**LINE EXTENSION AGREEMENT
FOR COMPANY INSTALLED FACILITIES**

THIS LINE EXTENSION AGREEMENT, entered into this 20th day of April, 2007, by and between TRUXTON CANYON WATER CO., INC., hereinafter referred to as the "Company" and JAMES BACUS., hereinafter referred to as the "Developer," is for the construction of utility plant necessary to provide water utility service to Lot numbers 27, 28 and 34, in Valle Vista, Unit One, Tract 1192, Mohave County, Arizona. (Hereinafter called the "Development").

WITNESSETH:

WHEREAS, Company owns and operates a public service corporation and holds, or will apply for, a Certificate of Convenience and Necessity from the Arizona Corporation Commission (Commission) authorizing it to serve the public with water; and

WHEREAS, Developer is developing property within the certificated area of the Company, which Development is more fully described in Attachment 1, attached hereto and incorporated herein by this reference for all purposes ; and

WHEREAS, the Company does not presently own or operate a water distribution system able to serve the Development; and

WHEREAS, under such circumstances the Commission's Rules and Regulations permit the Company to require an Advance In Aid Of Construction to provide such facilities.

NOW, THEREFORE, it is mutually covenanted and agreed by and between the parties hereto as follows:

**I. UTILITY PLANT ADDITIONS; COST; PAYMENT; COST ESTIMATE
CONDITIONS; COST REVISIONS AND DEVELOPER CANCELLATION**

A. Utility Plant Additions. The Company will construct, or cause to be constructed, the water utility plant described on Attachment 2, attached hereto and incorporated herein by this reference for all purposes.

B. Cost. The cost of construction of the subject plant as more fully detailed in Attachment 3, attached hereto and incorporated herein by reference for all purposes, is estimated to be \$24,816.00.

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C. Income Taxes - Presently applicable income taxes on property used exclusively by a single customer are set forth in Attachment 3. In the event it is determined by Congress, the Internal Revenue Service, the Arizona Legislature or the Arizona Department of Revenue that all or a portion of the cost estimates in Attachment 3 is taxable income to the Company as of the date of this Agreement, or upon receipt of said costs or facilities by the Company, the Developer will advance funds equal to the applicable income taxes for the Company's state and federal tax liability on all funds advanced pursuant to this Agreement. These funds shall be payable by the Developer to the Company immediately upon notification to the Developer of the determination by the appropriate agency having jurisdiction. At the time the refunds are made pursuant to Paragraph V.C, the Company shall also refund that portion of the income taxes associated with that refund that were advanced under this Paragraph V.B. The income tax advance refunds shall be based on the annual refund amount under Paragraph V.C, and computed at the same rate the advance was originally assessed.

D. Cost Estimate Conditions - The cost estimate in Attachment 3 is conditioned upon the following:

1. That the Developer add only those additional utility customers as specified in Attachment 1, and that only those facilities detailed in Attachment 2 are needed to serve the Development.
2. That prior to the commencement of construction, all permits, licenses and easements required under Paragraph III are obtained.
3. That all easements and rights-of-way provided shall be free of obstacles which may interfere with the construction of said facilities. If said subdivision, tract, development or project involves road construction, all roads and drainageways will be brought to grade prior to water facilities construction. No pavement or curbs shall be installed prior to completion of all water facilities. If any streets, roads, alleys, or drainageways are installed at a different grade, Developer shall bear all costs, on a non-refundable basis, which are incurred by the Company to relocate water facilities as a result of said facilities having insufficient cover.
4. That no design changes be made, caused or required by appropriate utility construction standards; the Developer or his agent; the Arizona Department of Environmental Quality; the Arizona Department of Health Services; the Arizona Corporation Commission; any county health department; or any other public agency under whose jurisdiction the subject construction may fall.
5. That construction will require conventional trenching only, and that no rocky or caliche conditions be encountered, which require extra equipment rental, hauling, blasting (including additional traffic control), supplies, labor (including overheads), or any other associated cost.

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6. That, at the time of actual construction, the Company is able to obtain acceptable bids for the materials, labor, and services to construct the facilities set forth in Attachment 2.
7. That the Developer complies with such additional terms and conditions as set forth in Attachment 4 hereto which is incorporated herein by reference for all purposes.

E. Cost Revisions and Developer Cancellation. In the event the conditions contained in Paragraph D, the footnotes to Attachment 2 and Attachment 3, or as set forth in Attachment 4 are not met, or in the event the construction requires zoning approvals or variances, or extraordinary licenses or permits, then, in any of those events, the Company reserves the right to revise the cost estimate contained in Attachment 3. An additional Advance will be required prior to the Company proceeding with the construction. If the Developer determines that such revised cost estimate is not acceptable, the Developer shall advise the Company of its cancellation of the request for service, in writing, within five (5) days of receipt of the revised estimate. Notice of cancellation shall relieve the Developer of any further Advance obligations; however, Advances made as of the date of notification shall become contributions by the Developer to the Company.

II. SERVICE; COMPANY LIABILITY LIMITATIONS; UNCONTROLLABLE FORCES; APPLICABLE RATES

A. Service. Notwithstanding any reference to fire protection facilities contained in Attachment 2 or Attachment 3 hereto, the subject plant additions are being installed primarily for the purpose of providing domestic water service to the Development. However, under certain operating conditions, those facilities may provide limited fire protection service to an appropriate fire protection agency contracting with the Company for such service.

B. Company Liability Limitations. It is understood between the Developer and the Company that the Company does not have, and the Developer will not install under this Agreement, facilities capable of providing fire flow to the Development. Therefore, it is expressly understood by the Company and the Developer that THE COMPANY DOES NOT GUARANTEE OR INSURE UNINTERRUPTED OR REGULAR FIRE PROTECTION SERVICE, NOR DOES THE COMPANY REPRESENT THE PRESENCE OF ADEQUATE PRESSURE, VOLUME, OR FIRE FLOW AVAILABLE ON THE SYSTEM BY OFFERING WATER SERVICE AS SPECIFIED HEREIN.

It is agreed that in the event service from the fire hydrants or an interior fire sprinkler system is used for non-fire protection purposes, or is interrupted or is irregular or defective or fails from causes beyond the Company's control or through negligence or alleged negligence of its employees, servants or agents, the Company shall not be liable for any injuries or damages arising therefrom. Further, the Company shall have neither the responsibility nor the liability for any use or disposition of fire hydrant or fire sprinkler water, even if such use or disposition is attributable, or is alleged to be attributable to the negligence of the Company's employees, agents or servants. The Developer, or any other person who succeeds to Developer's interest, REGARDLESS OF WHETHER SUCH PERSON HAS KNOWLEDGE OR NOTICE OF THESE TERMS, shall make no claim against the Company for any such loss or damage resulting from services provided under this Agreement or the

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applicable service tariff. The Company shall be entitled to recover its reasonable attorneys' fee should the Developer fail to comply with this provision.

In consideration for the Company providing this limited fire protection service with less than adequate storage and transmission facilities, the Developer agrees TO HOLD HARMLESS AND INDEMNIFY THE COMPANY from and against any and all liability, loss, damage or expense the Company may incur as a result of claims, demands, costs or judgments against the Company including, but not limited to injury or death of persons, arising, directly or indirectly, out of the Company's providing fire protection service, or any activities or operations related thereto, or any breach by the customer of the terms, covenants or conditions of this Agreement. This provision applies to and regardless of any negligence or alleged negligence on the part of the Company, its employees, servants or agents.

C. **Uncontrollable Forces.** Neither party shall be considered to be in default in the performance of any of its obligations hereunder (other than the obligation of Developer to pay Advances pursuant to Paragraph V) when a failure of performance shall be due to Uncontrollable Forces. The Party claiming failure of performance shall promptly contact the other Party and provide written notice that an Uncontrollable Force has caused failure of performance. The term "Uncontrollable Forces" shall mean any cause beyond the control of the Party unable to perform its obligation, including, but not limited to, acts of God, failure of or threat of immediate failure of facilities, explosions, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor disturbance, dispute or unrest of whatever nature, labor, material or fuel shortage, sabotage, restraint by court order or public authority and action or non-action by or inability to obtain the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome.

D. **Applicable Rates.** It is mutually understood and agreed that the charges for water services to said Development shall be at the applicable rates of the Company which are currently on file with the Arizona Corporation Commission. Those rates are subject to change from time to time upon application of the Company and as approved by the Commission.

III. PERMITS AND LICENSES; EASEMENTS; TITLE

A. **Permits and Licenses.** The Company agrees to obtain all licenses and permits from public authorities which may be required for the construction of facilities under this Agreement. The Company shall file applications for, or use its best efforts to obtain, the Certificate of Convenience and Necessity for the Development from the Commission and an appropriate franchise from the Mohave County Board of Supervisors.

B. **Easements.** Prior to the commencement of construction, the Developer shall obtain from the owners of the property upon which the subject facilities will be constructed, a perpetual easement for the construction, operation and maintenance of water lines, mains and appurtenant facilities, in the name of the Company, and in a form acceptable to the Company.

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C. Title. All materials installed, facilities constructed and equipment provided in connection with construction of facilities under this Agreement and the completed facilities as installed shall become the sole property of the Company, and full legal and equitable title thereto shall be then vested in the Company, free and clear of any liens, without the requirement of any written document of transfer to the Company or acceptance by the Company. Developer agrees to execute or cause to be executed promptly such documents as counsel for the Company may request to evidence good and merchantable title to said facilities free and clear of all liens.

IV. COMMENCEMENT OF PERFORMANCE AND TIME OF COMPLETION; ADDITIONAL FACILITIES; CONNECTING NEW FACILITIES

A. Commencement of Performance and Time of Completion. It is estimated that the Company shall start the work to be performed under this Agreement on June 20, 2007 and complete the work to be performed under this Agreement not later than August 20, 2007. The estimated construction schedule is conditioned upon: the Developer making timely Advances pursuant to this Agreement; the Company receives from the Developer the necessary governmental permits and licenses and obtaining easements pursuant to Paragraph III; and the Company encountering no extraordinary construction conditions. It is mutually understood and agreed that these commencement and completion dates are estimates only and no liability shall arise from failure to complete the facilities in accordance with said estimated dates.

B. Additional Facilities. It is understood by the Developer that the Company may, at its option and in its sole discretion, build or install facilities larger than those described in Attachment 3. The additional cost of those facilities, over and above the cost set forth in Attachment 3, shall be borne by the Company or assigned to another development.

C. Connecting New Facilities. The Company specifically reserves the right to refuse connection, or sewer connection, of the facilities constructed under this Agreement in the event the Developer does not advance any portion of the funds due and payable under this Agreement.

V. AMOUNT OF ADVANCE; REFUND; TRANSFER

A. Amount of Advance. Based on the estimated cost contained in Paragraph I.B, the Advance by the Developer shall be a total of \$24,816.00. Of the total Advance, \$-0- shall be a non-refundable contribution with the balance refundable pursuant to this Paragraph V. If the actual construction cost is revised pursuant to Paragraph I.D, the Advance shall be that adjusted amount.

B. Payment. The Advance payable pursuant to this Paragraph I shall be paid by the Developer to the Company in the form of certified bank check(s) upon execution of this Agreement. In the event there are cost revisions as contemplated in Paragraph I.E, Developer shall advance those funds prior to the Company proceeding with the construction.

C. Commencement of Refund. Refunds of the Advance In Aid Of Construction shall be made by the Company on or before the 31st day of August of each year commencing with August of 2009, covering any refunds owing from water revenues received during the preceding July 1 to

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June 30 period. Any additional charge made by the Company based on any sales, privilege tax, excise tax, or regulatory assessment, shall not be included in the computation. The annual refund shall equal ten percent (10%) of the total gross annual revenue from water sales to each bona fide customer in the Development for a period of ten (10) years from the date of this Agreement.

B. Unrefunded Balance. Any balance remaining at the end of the ten year period shall become non-refundable in which case the balance not refunded shall be entered as a Contribution In Aid Of Construction on the accounts of the Company.

E. Maximum Refund Interest on Advances Limitation on Revenue. The refund to the Developer under this Agreement shall in no event exceed the amount of the Advance, as adjusted. No interest shall be paid by the Company on any amounts advanced. The Company shall make no refunds from any revenue received from properties other than those located within the phase of the Development covered by this Agreement and contained within the area identified in Attachment 1 to this Agreement.

F. Transfer of Facilities. In the event of the sale, conveyance or transfer by the Company, pursuant to the approval of the Arizona Corporation Commission, of any portion of its water system, including the facilities serving the Development and installed pursuant to the terms of this Agreement, the Company's obligation under Paragraph V.C. Hereto shall cease (except as to any payment which is then due) condition upon the transferee assuming, and agreeing to pay the Developer, any sums becoming payable to Developer thereafter in accordance with the provisions of Paragraph V.C. of this Agreement.

G. Company's Right of First Refusal. Before selling or transferring the obligation of the Company under this Agreement, Developer shall first give the Company, or its assigns, reasonable opportunity to purchase the same at the same price and upon the same terms and conditions as contained in any bona fide offer which Developer has received from any third person or persons which he may desire to accept.

VI. MISCELLANEOUS

Before this Agreement shall become effective and binding upon either the Company or the Developer, it must be approved by the Arizona Corporation Commission or its authorized representative. In the event that it is not so approved this Agreement shall be null and void and of no force or effect whatsoever. This Agreement may not be modified or amended except by a writing signed by both parties. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and expressly supersedes and revokes all other prior or contemporaneous promises, representations and assurances of any nature whatsoever with respect to the subject matter hereof. The remedies provided in this Agreement in favor of the Company shall not be deemed its exclusive remedies but shall be in addition to all other remedies available at law or in equity. No waiver by the Company of any breach by Developer of any provision of this Agreement nor any failure by the Company to insist on strict performance by Developer of any provision of this Agreement shall in any way be

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construed to be a waiver of any future or subsequent breach by Developer or bar the right of the Company to insist on strict performance by Developer of the provisions of this Agreement in the future. Developer is an independent contractor and not an agent or employee of the Company. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the parties hereto and their respective successors and assigns.

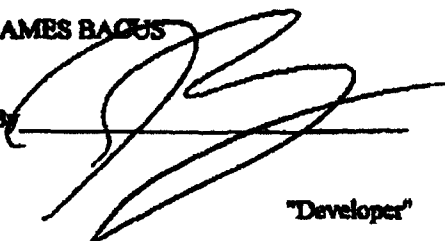
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

TRUXTON CANYON WATER CO., INC.

By 
Michael Neal

"Company"

JAMES BAGUS

By 

"Developer"